

### **REMARKS**

Claims 1, 5-10, 12-15, 17-24 remain in the case, of which claims 18-24 have been withdrawn from consideration.

Claim 1 and 17 have been amended in view of the Office Action and to better define what the Applicants consider their invention, as fully supported by an enabling disclosure.

Reconsideration in view of the following remarks and entry of the foregoing amendments are respectfully requested.

### **CLAIM REJECTION UNDER 35 USC § 112**

Claims 1, 5-10 and 12-15 and 17 remain rejected under 35 U.S.C. 112, first paragraph as allegedly failing to comply with the enablement requirement.

More specifically, the Examiner alleges that the claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Action page 2.

In an effort to further the prosecution and secure prompt allowance, claim 1 has been amended to specify that the gel matrix comprises about 36 to about 45% w/w ethoxydiglycol, as supported by the specification as filed in paragraphs [0029] and [0033]-[0034] for example, and provides herewith empirical evidence in the form of a Declaration under 37 C.F.R. 1.132 by one of the inventors of the present application, Benoît Choquet.

Applicants submit that Benoît Choquet's Declaration and evidence provided therein clearly show that a mixture comprising, minimally, about 15% w/w Aculyn, demineralised water and from 36.02% (about 36%) to at least about 45% w/w ethoxydiglycol allows to obtain a viscosity comprised between about 35 and about 55 centipoises (CPS), which showing is commensurate with the scope of the instant claims.

Applicants respectfully submit that the ranges 32-45% or 34-45% w/w ethoxydiglycol disclosed by Applicants in the specification as filed adequately support the instantly defined range of about 36 to about 45% w/w ethoxydiglycol, corresponding to the range actually represented in the enclosed Declaration and evidence provided therein.

A case involving a similar situation, namely *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976), supports Applicant's position. Indeed, this case involved a situation where applicants disclosed a range of solid contents of 25-60% and later claimed a range of 35-60%, which was considered adequately supported by the original specification. Thus Applicants here respectfully submit that the originally disclosed ranges of 32-45% or 34-45% w/w ethoxydiglycol adequately support the instantly claimed range of about 36-45% w/w ethoxydiglycol.

In view of the foregoing, Applicants submit that claim 1 as amended and supported by the specification as filed clearly enables the person of ordinary skill in the art to reproduce the claimed gel matrix without undue experimentation and obtain a viscosity within the claimed range.

In view of the above and foregoing, Applicants respectfully request that the Examiner reconsider and withdraw his rejection under 35 U.S.C 112, first paragraph.

U.S. Patent Application No.: 10/685,685  
Filing Date: October 15, 2003  
First Named Inventor: Anthony Costa

### Conclusion

The rejections of the original claims are believed to have been overcome by the present remarks and amendments to the claims. From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order, and such an action is earnestly solicited.

Respectfully submitted,  
SCHNADER HARRISON SEGAL & LEWIS LLP

Dated: 10/30/2007

By: Jean T. Kluger  
Jean T. Kluger  
Reg. No. 38,940  
1600 Market Street, Suite 3600  
Philadelphia, PA 19103  
Tel: (215) 751-2357  
Fax: (215) 751-2205  
E-mail: jkluger@schnader.com  
Attorneys for Applicants